

possession of by the purchaser. On this point, their Lordships are clearly of opinion that the High Court have decided rightly. Indeed the Subordinate Judge did not decide otherwise, so far as the facts go. As before mentioned, he held that only the coparcenary interest passed, because of the effect he ascribed to *Deendyal's case*. But he was clear that the language of the execution and sale proceedings was such that the purchaser must have thought that he was buying the entirety. It is equally clear that all parties thought the same.

The purchaser, therefore, has succeeded in showing that he bought the entirety of the estate, which could lawfully be sold to him, and the suit fails upon the merits. Their Lordships will humbly advise Her Majesty to dismiss this appeal, and the appellants must pay the costs.

Appeal dismissed with costs.

Solicitors for the appellants: Messrs. *Barrow & Rogers*.

Solicitor for the respondent, Modun Mohun: Mr. *T. L. Wilson*.

C. B.

1885

NANOMI
BABTASIN
v.
MODHUN
MOHUN.

SMALL CAUSE COURT REFERENCE.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Pigot and Mr. Justice Trevelyan.

1886

April 3.

WALLIS AND OTHERS (PLAINTIFFS) v. TAYLOR (DEFENDANT).*

Small Cause Court Presidency Towns Act (XV of 1882), s. 18—Jurisdiction—Army Act of 1881 (44 & 45 Vic, c. 58), ss. 148, 151—Leave to sue.

The jurisdiction given to Small Cause Courts by Act XV of 1882 is not affected by 44 & 45 Vic., c. 58, s. 151.

THIS was a reference from the Calcutta Court of Small Causes.

The facts of the case were that the plaintiffs, who had obtained leave to sue under s. 18 of the Small Cause Court Act of 1882, brought a suit in the Calcutta Court of Small Causes against the defendant, who was a lieutenant in the 45th (Rattray's) Sikhs and who was then stationed at Quetta, to recover Rs. 320-15-9 for goods sold and delivered. It was admitted that there was a Court of Small Causes in Quetta.

* Small Cause Court Reference No. 4 of 1885, made by H. Millett, Esq., Chief Judge of the Court of Small Causes at Calcutta, dated the 2nd of May 1885.

1886
WALLIS
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The defendant contended, with reference to the Army Act of 1881, that the Calcutta Court of Small Causes had no jurisdiction over an officer on duty outside Calcutta, in respect of suits of a less value than Rs. 400.

On the new trial out of which this reference arose the learned Judges differed in opinion on the question of jurisdiction. The Chief Judge, after stating his opinion of the effect of ss. 148 and 151 of the Army Act of 1881, and stating that it had been contended before the Court that the words "shall be cognizable" in s. 151 meant "shall be cognizable only," and that the whole spirit of the Act was to give to officers the privilege of being sued in the places where they may be serving, was of opinion that there was a marked distinction between section 148 and section 151 which led to the belief that the legislature did not intend to place the same restriction on matters coming within the purview of section 151 as it did on those coming within that of section 148: section 148 using the words "shall be cognizable before a Court of Requests . . . and not elsewhere," thus excluding the jurisdiction of all other Courts, section 151 using the words "shall be cognizable by such Court to the extent of its powers," the words "not elsewhere" being omitted, thus showing that the legislature did not intend to interfere where there might be a jurisdiction common to two Courts of Small Causes.

The Officiating Fourth Judge was of opinion that the Court of Small Causes referred to in s. 151 of the Army Act was the Court within the jurisdiction of which the defendant resided, and that there being a Court of Small Causes in Quetta the suit should have been brought there.

The learned Chief Judge, therefore, referred to the High Court the question, whether the Calcutta Court of Small Causes had jurisdiction in the matter?

Mr. *Pugh*, for the plaintiffs, contended that the jurisdiction of the Small Cause Court was not excluded by the Army Act of 1881; that s. 151 of that Act referred to personal jurisdiction; and that the suit had been rightly brought, after leave obtained under s. 18 of Act XV of 1882, in the Small Cause Court.

No one appeared for the defendant.

The opinion of the High Court was delivered by

PRIGOT, J.—It appears to us clear that the Small Cause Court has jurisdiction in such a case as the present.

By the Small Cause Court Act, jurisdiction is expressly conferred on Small Cause Courts, in cases the facts of which are such as those appearing here; and all that has to be considered in this case is, whether there is any provision in the Army Act of 1881 which takes away that jurisdiction.

We are of opinion that there is none. The doubt which has been felt in the matter arises from its being apparently supposed, that the words “shall be cognizable” in s. 151 of the Army Act, mean “shall be cognizable only.”

We are of opinion that there is nothing in that section of the Army Act, either in express words or by reasonable inference, to lead us to believe that it was the intention of the legislature in that section to affect the jurisdiction of the Small Cause Courts. We therefore answer the question referred to us in the affirmative.

We think it desirable to add that the discretion of the Small Cause Courts in giving leave to sue under s. 18 of Act XV of 1882 is one that ought to be only very cautiously exercised, in cases such as the one before us.

Attorneys for the plaintiffs: Messrs. *Sanderson & Co.*

T. A. P.

1886

WALLIS
v.
TAYLOR.

ORIGINAL CIVIL.

Before Mr. Justice Trevelyan.

KRISTO BHABINEY DOSSEE (PLAINTIFF) v. ASHUTOSH BOSU
MULLICK AND ANOTHER (DEFENDANTS.)*

1886

May 12.

Hindu Law—Partition—Widow's Share.

The plaintiff, the widow and heiress of one *N*, brought a suit for partition of the estate of one *R* (her late husband's father) against *A*, a son of her late husband's half-brother, and *K* the widow of *R*, the parties to the suit being the only members of the family then alive.

Held, that *A* took a one-half share in the estate, the other half share being divisible between the widow of *R* and the widow of *N*. *Calichurn Mullick v. Janova Dossee* (1) followed.

* Original Civil No. 63 of 1886.

(1) 1 Ind. Jur. N. S., 284.